REMARKS

Claims 1 to 15 and 20 are in the case.

Entry of the instant amendment is respectfully requested on the grounds that it now places the application in order for allowance or in the alternative, places the application in better condition for appeal.

It is believed and respectfully submitted that the rejection of the Examiner is based on a misunderstanding of the primary reference and the present invention. Applicant is submitting herewith, as discussed hereinbelow, evidence that the primary reference does not teach what is stated by the Examiner.

The essence of the present invention is that one may control soilborne pathogens in a soil by adding a nitrogen containing material and a pH reducing agent to the soil, the pH reducing agent being present in an amount sufficient to reduce soil pH below 5.5. This method kills the soilborne pathogens.

The primary reference of U.S. Patent 6,074,638 has been cited by the Examiner as allegedly teaching that potato scab disease is known to be controlled by increasing soil acidity as stated in column 3, lines 40 - 43. What the patentee really states is that "potato scab disease could be controlled by increasing soil acidity and application of fungicides to the soil". In other words, it is not the increasing acidity, but rather the fungicidal activity which controls a potato scab disease.

Applicant is attaching herewith, as Exhibit A, a study on the effect of reducing soil pH using sulfuric acid on potato scab disease. As will be seen, the effect of merely lowering soil pH has absolutely no effect on potato scab disease incidents. It is thus very

clear that the primary reference merely teaches that the use of fungicides will help control potato scab disease.

Based on the above, it is believed that the primary reference completely fails to be relevant to the claimed invention. The remaining references are likewise completely deficient in teaching the essence of the present invention.

Weltzien et al has been relied on by the Examiner to teach adding a fertilizer containing ascorbic acid to a soil. Initially, this reference has nothing to do with a method of controlling soilborne pathogens. Rather, it deals with a solution which is suitable for use as a fertilizer. While it is true that ascorbic acid is used, the patentee teaches that one may use a buffer to maintain a stable pH of between 6 to 8.

As has been well established in the art, there must be some teaching in the prior art to lead one to the combination of references. Certainly, the two references combined by the Examiner do not contain this teaching. The primary reference is related to controlling potato scab disease while the other reference teaches a fertilizer which promotes the growth of grass and plants.

In view of the above, it is respectfully submitted that the claims clearly and patentably define over the art of record.

Respectfully,

Eric Fincham, Reg. 28,201

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the Patents and Trademarks Office Fax No. (703) 872-9307 on the date set forth below.

Eric Fincham, Reg. 28,201

Sept 13, 2002
Date